

REMARKS

Claims 1- 3, 5 - 12 and 14 - 15 remain active in this application. Claims 4 and 13 have previously been canceled. Claim 3 has been amended to comport with U.S. patent practice. Claims 1 and 9 have been amended to more clearly recite the novel features of the present invention by emphasizing the features of the invention already explicitly recited in the original claim language; particularly, that the switching of the antennas is responsive to the detection signal. Support for these amendments can be found throughout the specification, particularly at pages 5 - 9 of the specification and shown in Figures 1 - 4. No new matter has been introduced into the application.

Claims 1- 3, 5, 7 and 8 have been rejected under 35 U.S.C. §103 as being unpatentable over Mizoguchi in view of Vannatta et al. Claims 9, 11, 12 and 15 have been rejected under 35 U.S.C. §103 as being unpatentable over Werling et al. in view of Bowen et al. Claim 6 has been rejected under 35 U.S.C. §103 as being unpatentable over Mizoguchi in view of Vannatta et al. and Bowen et al. Claim 7 is rejected under 35 U.S.C. §103 as being unpatentable over Mizoguchi in view of Vannatta et al. and Werling et al. Claim 10 has been rejected under 35 U.S.C. §103 as being unpatentable over Mizoguchi in view of Bowen et al. and Vannatta et al. Claim 14 has been rejected under 35 U.S.C. §103 as being unpatentable over Werling et al. in view of Bowen et al. and Mizoguchi. All *six* of these grounds of rejection based on various permutations of four references are respectfully traversed for the reasons of record and the further remarks provided below.

Mizoguchi discloses a portable telephone that detects the contact of an antenna with a human body part. In particular, it appears that Mizoguchi teaches a detecting circuit that detects the presence of a human body part (e.g., hand, ear, etc.) when the body part contacts the antenna. Upon such detection, a notifying section notifies a user via a notifying method (e.g., vibrations, speaker, LED, etc.). When notified that a body part is interfering with the antenna and the user is notified of the interference, the user presumably moves his or her particular body part away from the part of the phone where interference occurs, thus restoring the antenna signal (see column 12, lines 55-59, in Mizoguchi). In other words, the user makes it possible to improve transmission performance by moving the body part causing the interference, not by the switching of antennas in a manner transparent to the user. Conversely, claim 1 of the present invention, as amended, explicitly states that the switching of the antennas is responsive to the outputting

of the detection signal (i.e., the improvement in transmission is automatic). Further, the Examiner acknowledges that Mizoguchi fails to teach or suggest a second antenna that is used for transmission and cites Vannatta as teaching this admitted deficiency.

With regard to Vannatta, while Vannatta may disclose a radio communication device with two antennas, at no point does Vannatta teach or imply *any* detection of body proximity or contact with any of the antennas or antenna coverage much less provision of any automatic corrective action for transmission in response to such a detection. Further, the “motivation” to combine Mizoguchi and Vannatta as indicated by the Examiner (i.e., “. . . provide the necessary separation for diversity as well as providing distance from interfering electrical components”) does not comport with the purpose behind the present invention, particularly, the detection of bodily interference with any of the antennas and automatic transmission corrections in response to such detection. Accordingly, the Examiner has not, and cannot, satisfy his burden under 35 U.S.C. §103. *See ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 221 USPQ 929, 933 (Fed. Cir. 1984) (“[obviousness] cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination.”); *see also In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (holding that just because the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification).

Werling appears to disclose a radio communication apparatus, the purpose of which is “to limit the emission of noxious radiation for the benefit of the user’s health” (see column 2, lines 17-24, in Werling). In particular, Werling describes a proximity detector 39 that detects the proximity of human tissue to one of the antennas 30 - 33. Once the detector detects human tissue near one of the antennas, that particular antenna shuts down (see column 4, lines 4-10, in Werling), regardless of whether the transmission or reception is affected generally or by the human tissue, thus appearing to achieve the intended purpose of Werling which is to reduce the amount of radiation directed towards the user. To the contrary, claim 9 of the present invention specifically provides for the detector to detect “the deterioration of an antenna characteristic,” not the detection of the direction of the body part relative to the antenna. Further, the Examiner has admitted that Werling fails to teach the detector being an optical sensor and cites Bowen as supplying this admitted deficiency.

Bowen discloses a portable communication device that automatically transitions between a traditional handset mode and a speaker phone mode. It appears that the automatic transition occurs via an infrared detection unit in the handset. However, the transition that occurs is not between antennas, but between handset and speaker modes. Further, the “motivation” to combine Werling and Bowen as indicated by the Examiner (i.e., “... to use an optical sensor to detect human proximity so that harmful radiation may be directed away from said tissue . . .”) does not comport with the purpose of Bowen or the present invention, as previously described. Specifically, the combination of Werling and Bowen would result in a radio communications device with an infrared proximity detector that detects the proximity of human tissue to an antenna, and shutting down said antenna in order to prevent the emission of radiation towards the user. This is different in form and function from the claimed invention, wherein the claimed device uses an antenna that is not covered, rather than disabling an antenna radiating towards the user independently of any change in the antenna characteristics. In other words, in view of the function of Bowen, one would not look to Bowen to support the function of Bowen and even if Werling were to be modified in accordance with Bowen, the meritorious function of the invention would still not be achieved. Rather, the Examiner’s logic underlying the proposed modification is clearly a hindsight reassembly of the claimed subject matter.

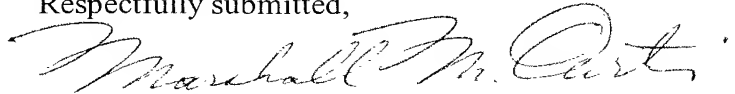
Accordingly, it is respectfully submitted that all claims of the application recite features of the invention which are not addressed by any of the references relied upon and which do not present evidence of a level of ordinary skill in the art which would support the conclusion of obviousness which the Examiner has asserted. Assuming, *arguendo*, there was motivation in any of the cited references to combine the inventions disclosed therein, the present invention as claimed would still not result since no combination of the applied references provide evidence of a level of ordinary skill in the art which would support the conclusion of obviousness asserted by the Examiner since they do not lead to an expectation of success in achieving the meritorious efforts of the claimed invention. Similarly, no *prima facie* demonstration of obviousness has been, or can be, made in regard to any claim in the application and the various grounds of rejection are respectfully submitted to be in error and untenable. Therefore, reconsideration and withdrawal of the grounds of rejection of record is respectfully requested.

Since all rejections, objections and requirements contained in the outstanding official action have been fully answered and shown to be in error and/or inapplicable to the present claims, it is respectfully submitted that

reconsideration is now in order under the provisions of 37 C.F.R. §1.111(b) and such reconsideration is respectfully requested. Upon reconsideration, it is also respectfully submitted that this application is in condition for allowance and such action is therefore respectfully requested.

If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Marshall M. Curtis".

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